



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE SOUTHWESTERN HISTORICAL QUARTERLY

VOL. XXI

JANUARY, 1918

No. 3

The publication committee and the editors disclaim responsibility for views expressed by contributors to THE QUARTERLY

THE GOVERNMENT OF AUSTIN'S COLONY, 1821-1831

EUGENE C. BARKER

1. *The Eastern Interior Provinces, 1820*

In 1820, when Moses Austin made his memorable journey to ask permission to settle three hundred families in the Spanish province of Texas, the territory was one of the Eastern Interior Provinces (*Provincias Internas de Oriente*), and it is therefore necessary to notice briefly the political history of this administrative division of New Spain. By a royal order of August 22, 1776, all the northern provinces of Mexico had been separated from the jurisdiction of the viceroy and placed under the authority of a commander who was responsible directly to the crown. The division thus created was the *Provincias Internas*. Another royal order of May 30, 1804, directed the division of this into the Eastern and Western Provinces, but was not carried into effect. It was renewed in 1811 and was finally effected in 1813, when General Joaquin de Arredondo became the first Commandant of the Eastern Interior Provinces. Texas, Coahuila, Nuevo Leon, and Santander or Tamaulipas constituted this district.¹ The commandant was both civil and military head of the provinces, and was independent of the viceroy, though the financial administra-

¹This information is derived mainly from the royal orders of November 22, 1792, and May 30 1804, and an extract of an order of the Regency quoted by Salcedo in a letter to Minister of War, November 22, 1812, in the Bexar Archives. Bancroft, H. H., *North Mexican States and Texas*, I, 636-45, and II, 27, supplements the documents.

tion was subordinate to the intendent of San Luis Potosí.² Each province had its own governor and military commandant and was subdivided, or divisible, into departments, districts (*partidos*), and municipalities. Texas constituted one department, and in 1820 contained but two organized municipalities, Bexar and La Bahia, the present Goliad. The government of a municipality, which included not only the town but much of the surrounding country, was an ayuntamiento.

Prior to 1820 there does not appear to have been anything that might be considered a federal or inter-provincial legislative body, but in the summer of that year Arredondo received news of the King's renewed acceptance of the Constitution of 1812, with orders to have his provinces elect deputies to the Spanish Córtes and representatives to a provincial deputation. The Eastern Provinces were allowed two deputies in the Córtes, and representation in the provincial assembly was to be based on population as shown by the census of 1818. A "*junta preparatorio*," consisting of eight civil and ecclesiastical officials was to divide the provinces into electoral districts and apportion representation.³

On July 6 this *junta* met at Monterey. It recognized Bexar as the capital of Texas, and instructed the Governor to have an elector chosen to come to Monterey and join those of other districts in electing deputies to the Córtes and to the provincial deputation.⁴ The local procedure was somewhat elaborate. First, Bexar chose twenty-one electors and La Bahia eleven. The Bexar delegation then selected two representatives and the La Bahia electors one; and on September 10 these three met at Bexar and selected Juan Manuel Sambrano as the provincial elector.⁵ On October 1 the electoral *junta* of the four provinces under Arredondo's command met at Monterey and elected deputies to the Córtes. The next day it elected the provincial deputation, composed of seven delegates—two each for Coahuila, Nuevo Leon,

²This statement is based on correspondence of 1820 in the Bexar Archives between Arredondo and the intendency of San Luis Potosí.

³*Instruccion á la cual deberán celebrarse en las provincias de Ultramar las elecciones de Diputados de Córtes.* . . . Nacogdoches Archives, Texas State Library.

⁴Arredondo to Martínez, August 2, 1820. Bexar.

⁵*Ibid.*; and local election returns of Bexar and La Bahia in Bexar Archives.

and Santander, and one for Texas. The Texas delegate was Ambrosio Maria de Aldasoro, a merchant of Monterey. The commandant general presided over the deputation, and the intendent was a member, but was not present.⁷

The provincial deputation was a creation of the Constitution of 1812 (articles 324-37). Its duty was declared to be, in general, to promote the prosperity of the province. More in detail, it was to apportion and approve the levy of local taxes; establish ayuntamientos according to law; take the census; encourage the education of the young; and to promote agriculture, industry, and commerce. Its sessions were limited to ninety days during the year, and half the members retired annually.⁸ It was to this body that Arredondo referred Moses Austin's application for a permit to introduce three hundred families into Texas; and on January 17, 1821, it recommended that the petition be approved.

2. *Early Local Government in Austin's Colony*

(1) *Powers granted to Stephen F. Austin.*—In August, 1821, after the death of Moses Austin, Martinez recognized Stephen F. Austin as his father's successor, authorized him to explore the country and select the region which he wished to colonize, and approved the terms which he proposed for the distribution of land to settlers.⁹ Since the region selected by Austin would be a wilderness, uninhabited and without political organization, and since he himself would have no means of extending administration to it at once, the Governor made it plain that, for a time, Austin must be responsible for the local government. "You will cause them all [the colonists] to understand that until the government organizes the authority which is to govern them and administer justice, they must be governed by and subordinate to you."¹⁰ Early in 1822 Austin found it necessary to visit the City of Mexico to get a confirmation of his permit, and the imperial

⁷An *Aviso*, or printed notice, issued by the electoral *junta* on October 3. Bexar Archives.

⁸Dublan and Lozano, *Legislacion Mexicana*, I, 375-376.

⁹Martinez to Austin, August 14, 1821, in Wooten, editor, *A Comprehensive History of Texas*, I, 472; same to same, August 19, Records of the General Land Office, Vol. 54, p. 68.

¹⁰Same to same, August 24, 1821, in *A Comprehensive History of Texas*, I, 472.

decree of February 18, 1823, which granted this, provided that he should form his colonists into militia companies; and, until the government of the settlement was organized, charged him with the administration of justice.¹¹ This was confirmed on April 14 by the supreme executive power which succeeded Iturbide.¹² At Monterey, in May, 1823, on his way home, Austin sought a more particular definition of his position. Did his judicial authority extend to the punishment of capital crimes, or only to the arrest of the criminal for trial at Bexar; and how was the cost of justice to be met? Did he have authority to make war on the Indians? What was to be his rank in the national militia? General Felipe de la Garza, who had succeeded Arredondo as Commandant of the Eastern Interior Provinces, referred Austin's letter to the provincial deputation, and, with its advice, replied on June 16. In all capital case he was to refer the process (record of the trial) and the verdict to the superior government, and while awaiting its report was to work the prisoner on the public roads. He had full authority to wage war on the Indians; and was to be lieutenant-colonel of militia.¹³ "In short," said Austin of himself, "the provincial deputation decreed that the should preserve good order, and govern the colony in all civil, judicial, and military matters, according to the best of his abilities, and as justice might require, until the government was otherwise organized and copies of laws were furnished, rendering to the Governor of Texas an account of his acts, or of any important event that might occur, and being himself subject to him and the commander-general. The local government was thus committed to him with the most extensive powers, but without any copies of laws, or specific instructions whatever, for his guide."¹⁵

(2) *Administrative divisions*.—On his return to the colony, Austin found that Governor Trespalacios, who had succeeded Mar-

¹¹A *Comprehensive History of Texas*, I, 474.

¹²Gammel, H. P. N., *Laws of Texas*, I, 12.

¹³Austin to Garza, May 27, 1823, and Garza to Austin, June 16, 1823. Records, Vol. 54, p. 84, and Translations of Records of Austin's First Colony, Vol. I, p. 14, General Land Office.

¹⁵Gammel, *Laws of Texas*, I, 13.

tinez in August, 1822,¹⁶ had divided the settlement into two districts, one on the Colorado and one on the Brazos, with an alcalde in each to look after details of local administration and justice.¹⁷ In December, 1823, Austin subdivided the Brazos district, and made a third, which he called the San Felipe district;¹⁸ in the fall of 1824 he incorporated into his colony some immigrants who had drifted in and settled on the San Jacinto, and continued the district already there;¹⁹ in January, 1826, he established the district of Mina, on the Colorado;²⁰ and at the same time, apparently, subdivided the San Felipe district to create the district of Victoria.²¹ By the beginning of 1828 there was still another district, making seven in all.²² Associated with the alcalde in the administration of these early districts there was a "constable" with substantially the authority and functions of such an officer at present.²³

¹⁶Trespalcacios took over the office of Governor from Martinez on August 17, 1822; and resigned April 17, 1823. See Martinez to Trespalcacios, August 17, 1823, and Trespalcacios to *junta provincial gubernativa*, April 17, 1823. Bexar Archives.

¹⁷Austin's statement to his colonists [1829], in *A Comprehensive History of Texas*, I, 458; Gammel, *Laws of Texas*, I, 15. Trespalcacios to Bastrop, November 10, 1822 (University of Texas transcripts from Department of Fomento, Mexico): "Have the colonists elect a military commandant and an alcalde or *juez politico* to do justice to all the inhabitants of the district." The same document, with Bastrop's report on the colony, December 11, 1811, is in the General Land Office at Austin, Spanish Records, Vol. 54, pp. 75-78.

¹⁸Austin's proclamation, December 2, 1823. Austin Papers, miscellaneous. The limits of this district were defined as extending from Chocolate Bayou on the east to the San Bernard on the west, and from the Coast to the Coshattie road in the interior. On January 1, 1825, the district of the Brazos changed its name to Bravo in honor of General Nicholas Bravo. See proclamation of Austin, of that date. Austin. Papers, miscellaneous.

¹⁹Austin wrote Gaspar Flores, political chief of Texas, on August 26, 1824, that the settlers of San Jacinto wanted to join his colony and suggested that he be allowed to extend his jurisdiction to the left bank of the San Jacinto. Flores approved this request on September 21, and on November 4, 1824, Austin reported that it had been done. All the letters are in the Austin Papers.

²⁰Austin to Morrison and Buckner, January 4, 1826. Austin Papers.

²¹*Ibid.* The authority for this statement is a note on the same sheet, without date.

²²Austin's statement to his colonists [1829], in *A Comprehensive History of Texas*, I, 458; and Gammel, *Laws of Texas*, I, 15.

²³John Tumlinson to Bastrop, March 5, 1823 (Austin Papers), says he has appointed but one constable to summon witnesses and make arrests.

(3) *Austin's "Instructions and Regulations for the Alcaldes."*—For two years the alcaldes seem to have followed a procedure of their own, each "doing what was right in his own eyes," but probably conforming as nearly as conditions and his own knowledge would permit to the practice of a justice of the peace in the United States. It was power of a sort which they did not enjoy, however. They knew their own people too well and the Mexicans not well enough to feel very comfortable. John Tumlinson, alcalde of the Colorado district, begged Bastrop for a "rule whereby I may in future be governed for the general good and peace of society."²⁴ Josiah H. Bell, of the Brazos, after confiscating the property of a horse thief to pay for the stolen horses and the cost of capturing him, anxiously asks the Governor to say whether he has done rightly.²⁵ His successor, John P. Coles, in a somewhat similar case resorted to a jury of six who fined the defendant heavily and suggested that he be banished from the colony.²⁶

To introduce a more uniform system, and to relieve the alcaldes of responsibility and embarrassment, Austin, on January 22, 1824, promulgated a set of "Instructions and Regulations for the alcaldes." This constituted a brief civil and criminal code, which Austin apologetically said he had drawn up without the aid of form books or precedents, while subject to all sorts of interruptions; wherefore experience might disclose many errors and omissions which would have to be corrected. His sole purpose in everything was "but to promote the general prosperity and happiness of us all." James Cummins acknowledged receipt of his copy on March 23: "I think them good for which myself and my neighbors give you thanks. May the Lord direct us to administer them properly."²⁷

The people complain of the constable's mileage fee of five cents a mile. He has not charged for his own services and time, which he can ill afford to give to the business. Tumlinson was alcalde of the Colorado district. On January 26, 1824, John Austin was appointed constable of the new district of San Felipe and gave bond for \$500. Austin Papers, miscellaneous.

²⁴Tumlinson to Bastrop, March 5, 1823. Austin Papers.

²⁵Bell to Trespalcacios, May 4, 1823. Austin Papers.

²⁶Coles to Austin, January 31, 1824. Austin Papers.

²⁷Austin to Coles, January 25, 1824, and Cummins to Austin, March 23, 1824. Austin Papers. The "Regulations" may be found conveniently in *A Comprehensive History of Texas*, I, 481-492.

The Civil Code provided for the appointment by Austin of a sheriff to execute his own processes as judge, and constables to execute those of the *alcaldes*; fixed the jurisdiction of *alcaldes*; and prescribed a definite judicial procedure. The *alcalde* acting alone had final jurisdiction under ten dollars, acting with arbitrators he had final jurisdiction up to twenty-five dollars, and primary jurisdiction, subject to appeal, in cases up to two hundred dollars. As the first step in settling a case, he must try to bring the litigants to an agreement by "conciliation"—a sort of settlement out of court. If this failed, he proceeded to try the case alone or with the help of arbitrators, as the parties to the suit determined. The political chief, José Antonio Saucedo, approved this code on May 23 and added to Austin's draft two articles, one regulating the treatment of stray animals and the other the registering of marks and brands.²⁸

The Criminal Code Saucedo approved the next day, May 24.²⁹ Articles 1-4 dealt with offences by Indians,—such as violence to colonists, rambling through the colony without license, stealing, etc. Anybody was authorized to arrest and conduct such Indians, without the use of arms, if possible, to the nearest *alcalde* or captain of militia. If, upon examination by such official, the Indians proved to be guilty, they might be punished by twenty-five lashes. Section 5 dealt with offenses against Indians. The colonists were forbidden under penalty of heavy fines to abuse Indians, being enjoined, on the contrary, to treat them "at all times and in all places in a friendly, humane, and civil manner so long as they deserve it." Several articles covered offenses by and against slaves and provided for the recovery of fugitive and stolen slaves by

²⁸Article 30 of Austin's code constituted the first fee bill ever in operation in Anglo-American Texas. The *Alcalde's* fees were: "Issuing a criminal warrant, 4 bits; for a forthwith summons, 3 bits; subpoena, 2 bits; summons, 2 bits; subpoena for arbitration, 2 bits; judgment, 3 bits; entering stay of execution, 2 bits; entering appeal and writing appeal bond, 8 bits; issuing execution, 2 bits; entering special bail and taking bond in case of attachment, 3 bits; ditto recording, for every 100 words, $\frac{1}{2}$ bit." For sheriff and constable fees: "Serving criminal warrant, 8 bits; serving a forthwith warrant, 4 bits; summons, 2 bits; summoning arbitrators or jury, 3 bits; mileage, going and returning, 5 cents a mile; levying an execution, 2 bits; selling property and collecting money, 4 per cent on sums under \$200—and 1 per cent on every \$100 after."

²⁹Saucedo's certificate is in the Austin Papers, miscellaneous.

their owners. The rest of the regulations dealt with various crimes—some suggested, no doubt, by anticipation and some by actual experience in the colony: murder, theft, robbery, gambling, profane swearing and drunkenness, cohabitation without marriage, counterfeiting or passing counterfeit money, etc. Horse racing was excepted from the general prohibition of gambling, “being,” it was explained, “calculated to improve the breed of horses,” but no debt contracted thereby was recoverable by law. All cases must be investigated by the alcalde and tried by a jury of six and the record and verdict transmitted to Austin for final judgment. Capital cases must, as we have seen, be submitted by Austin to the authorities at Monterey. Fines were the usual penalties prescribed by the regulations—to be applied to schools and other public purposes—but whipping and banishment from the colony were allowed. For theft the penalty was a fine of three times the value of the stolen property, and hard labor on public works “until the superior government decides on the case.” Alcaldes must keep a permanent record or docket of all cases tried by them and pass it on to their successors.

In a letter to the political chief in August, 1824, Austin suggested a scale of moderate judicial fees which he asked authority to put in operation for so long as he should be responsible for the administration of justice.³⁰ He had charged nothing for any public service up to that time,³¹ and in 1829 he again wrote that up to February, 1828, when the ayuntamiento was organized “the labor and expense of the local government fell principally on me individually.”³²

Austin’s “Old Three Hundred” were a remarkably law-abiding people. He wrote Bastrop in December, 1824, that since his return from Mexico, more than eighteen months before, there had been only one theft.³³ Had the alcaldes exercised judicial functions alone, therefore, their public duties would have been unimportant, but they performed other services. They were Austin’s

³⁰Austin’s blotter, August 26, 1824. The rates suggested were: Cases involving from \$25 to \$40 six *reales*, \$40 to \$70 eight *reales*, \$70 to \$100 twelve *reales*, and above \$100 two dollars.

³¹Austin to his colonists, June 5, 1824. Austin Papers, miscellaneous.

³²*A Comprehensive History of Texas*, I, 48.

³³Austin to Bastrop, December 22, 1824. Austin Papers, miscellaneous.

local correspondents, receiving, promulgating, and executing his orders, and keeping him informed of local opinions and conditions; supervised militia elections; kept their districts free of prowling Indians and vagabonds; settled quarrels; attested contracts; and performed what passed in effect for a civil marriage ceremony. They occupied, in fact, a sort of patriarchal relation to their respective communities.

With the rapid influx of immigrants, after 1825, judicial business increased and Austin found himself unable to spare the time from other pressing demands to attend to appeals from the alcalde courts. On July 6, 1826, he issued a proclamation ordering each of the six districts then existing to elect a representative to meet with him to form a new judicial system and adopt an equitable system of taxation for its support and defend the settlements from hostile Indians.³⁴ The result of this conference was the creation of a supreme court composed of any three alcaldes. This might hear appeals from Austin himself, but it is evident that in most cases the appeal was directly from a single alcalde to this body without going before Austin. The court of the alcaldes, as he called it, held three sessions a year at San Felipe.³⁵

In November, 1826, Austin outlined for Bastrop, the Texan deputy in the State Congress, or Legislature, a complete judicial system for Coahuila and Texas. He thought this one of the State's most pressing needs. Texas should have two circuit courts, one with jurisdiction from the Sabine to the Lavaca and the other from the Lavaca to the western limit of the State; and there should be a superior court with sessions alternately at Bexar and Saltillo. The circuit courts should have final appellate jurisdiction over all cases sent up from the alcalde courts, and original jurisdiction above the alcalde's range. In some instances, of which he failed to give an illustration, he thought the superior court should have original jurisdiction; but in general it would confine itself to a review of the circuit courts. He hoped that the jury system could be established in criminal cases, and, in the meantime, appeals should be allowed in all capital cases, so that

³⁴Proclamation of July 6, 1826. Austin Papers, miscellaneous.

³⁵Austin's reply to an interrogatory in the case of *Keep vs. Groce*, Austin Papers, undated, 1830-1835; Austin's Explanation to his Colonists, a pamphlet published in 1929, in *A Comprehensive History of Texas*, I, 459.

the decision of life or death should not rest with one man. Sessions of the court in the eastern circuit might be fixed for the second Monday of October, February, and June at San Felipe, and the second Monday of December, April, and August at Nacogdoches. At both places there should be a resident clerk to keep records, issue processes, etc., and a sheriff or *alguacil* to execute writs and decrees. Fees of all officers should be fixed and forms provided for uniform procedure. Judicial proceedings in English translated into Spanish by an official translator should be legalized. This, in fact, was essential. Notaries should be created, and a digest of laws in force should be published in book form, distributed to officials, and sold at a moderate price to the people.

Turning then to general administration, Austin urged the appointment of a sub-political chief (*gefe subalterna*) at San Felipe, with authority from the Sabine to the Lavaca, or, better, two sub-alterns, dividing this territory between them, he should understand English and Spanish and be a medium of communication between the political chief and the *alcaldes*.³⁸

The main features of this plan were gradually enacted during the next eight years, but at the moment nothing was done.

Want of specific laws was from the beginning a source of embarrassment and perplexity to Austin, as it had been to the *alcaldes*. He always conformed to Mexican laws and procedure when he could ascertain what they were, and when he could not, or when they did not seem to apply to the peculiar colonial conditions, "necessity," as he wrote Lucas Alaman, "compelled me to adopt provisional and temporary regulations."* Some of the laws which he early urged upon Bastrop to meet "peculiar colonial conditions" were a probate law for the settlement of estates whose heirs resided in foreign countries; a law concerning the sale, deed-ing, and conveyancing of land by the colonists; and a law staying for twelve years the enforced payment of debts contracted by colonists before coming to Texas.

(4) *The Militia*.—Two other subjects demanded Austin's

³⁸Austin to Bastrop, November 3, 1826. Austin Papers, miscellaneous.

*Austin to Alaman, January 20, 1824. University of Texas transcripts from Department of Fomento, Mexico.

early attention—the organization of the militia and the establishment of a land system. By the national law of April 9, 1823, every male citizen between the ages of eighteen and fifty was subject to militia service, and, as we have seen, Austin was by the terms of his commission commander-in-chief of the militia of his colony. For a time the menace of the Indians was an effective stimulus to the observance of the law. In June, 1823, while on his way from Mexico, Austin issued an order dividing the scattered settlements into five districts and instructing the inhabitants to elect company officers in each.³⁷ For several years the service was fairly burdensome, and from time to time Austin had to subdivide the original districts to permit greater flexibility and local independence in dealing with marauding tribes.³⁸ A history of the militia, if material were available, would involve a history of the Indian wars of colonial Texas. By 1829 the white man's power was established, raids became infrequent, and interest in the militia organization diminished to such a degree that Austin complained that less than thirty per cent of the voting strength of the companies took the trouble to vote for officers.³⁹ They had much more important matters to occupy them.

(5) *The Land System.*—This topic deserves treatment in a separate paper. Only a summary can be given here. The subject received Austin's closest attention, and brought him more annoyance than any other problem with which he had to contend. He had wide discretion in the allotment of land to settlers in his first contract, and some who received less than others accused him of partiality and unfairness. He knew the history of the harassing litigation that beggared the early settlers of Kentucky and Tennessee, and the orderly surveys and necessary formalities and restrictions which he insisted on to prevent such a condition in Texas seemed to some who could not understand their beneficent purpose merely irritating interferences of a petty tyrant. His surveyors and clerks had to be paid, and because he exacted a fee of 12½ cents an acre for the land, they abused him for exploiting them.

³⁷Proclamation. Austin Papers, miscellaneous.

³⁸Proclamation dividing the fifth district, December 5, 1823; and of March 31, 1824, dividing the third district. Austin Papers, miscellaneous.

³⁹Austin to Bell, April 4, 1829. Austin Papers.

First as to the fees: on August 18, 1821, just before leaving San Antonio to select the land for his colony, Austin submitted a plan to Governor Martinez for the distribution of the land to settlers. Every man, whether married or single, should receive a town lot and a parcel of farming and grazing land, the former fronting on a water course. If married, two hundred additional acres should be granted in the wife's right, eighty acres for each child, and fifty for each slave. Martinez endorsed the plan and forwarded it to the commandant for approval. In the meantime, he thought Austin might proceed on the assumption that it would be approved, as he felt sure that no important alterations would be made by his superiors. From Natchitoches Austin wrote him on October 12 that he had decided to diminish the amount of land to single men and increase it to heads of families, giving them 640 acres for a headright, 320 acres for the wife, 160 for each son, and 80 for each slave.⁴⁰ In neither of these communications did Austin say anything to Martinez about charging the colonists a fee for the land.⁴¹ He had, however, already made contracts with colonists, agreeing to deliver land at 12½ cents an acre and bear all costs himself for surveying, issuing and recording titles, stamped paper, etc.⁴² Half was to be paid on receipt of title and the other half a year after. On returning to New Orleans, Austin published these terms in the newspapers and they were widely copied by the western press.⁴³ He sent Martinez and Garza copies of the papers containing his announcements and assumed that by their silence they approved. It must be obvious

⁴⁰Austin to Martinez, August 18, and Martinez to Austin, August 19, 1821. Austin Papers. Austin to Martinez, October 12, 1821. University of Texas Transcripts, archives of the Department of Fomento, Mexico.

⁴¹Austin said in his explanation to his colonists (June 5, 1824, Austin Papers, miscellaneous), that he wrote Martinez from Natchitoches "that as the land which I was to receive for myself would be no compensation for my labors and expenses in an enterprize of such magnitude, I must receive something from the settlers or I could not proceed with the Business."

⁴²Agreement with J. H. Bell, October 6, 1821, and with William Kincheloe, October 16. Austin Papers, miscellaneous.

⁴³ . . . "And explicitly stated that those who settled under the said permission to my father must pay me 12½ cents per acre which would be in full for all expences of surveying and everything. I was particular to make these terms as public as possible that no one might come without knowing distinctly the conditions of his reception."—Austin to his colonists, June 5, 1824.

to any one, he argued, that he would never have undertaken the labor and expense of establishing the colony without expecting some compensation besides the land which he might acquire. Before this question became an issue with his colonists, however, he was to have a bout with the government and gain through delay and disappointment an insight into private and official Mexican character the lack of which brought partial or complete failure to every other empresario who undertook to colonize a grant.

On December 15, 1821, Gaspar Lopez, who had succeeded Garza as commandant general of the Eastern Interior Provinces, wrote Martinez that Austin had no authority to make allotments of land, that his applications must be presented to the government, and that should the settlers arrive in the meantime, the nearest ayuntamiento should locate them provisionally until the supreme government passed the necessary provision.⁴⁵ Martinez reported the substance of this to Austin in March, 1822, and advised him, if he wished to avoid delay, to go to the capital and urge his cause in person. After one night's deliberation Austin set out for Mexico City, where he arrived on April 28. He found the new government unwilling to make a special order of his case, and had to wait with what patience he could until Congress should pass a general colonization law. The committee in charge of the subject worked slowly, with many interruptions and diversions, so that it was not until January 4, 1823, that the law was passed. "I can," said Austin, "without boasting say that my constant Exertions and importunity with the Members both directly and indirectly through my friends produced this law."⁴⁷ Six weeks later (February 18) the Emperor approved Austin's petition to settle his three hundred families on the terms established by the law. Only two features of the law need be noticed here. One increased enormously the amount of land that Austin had promised his colonists, allowing headrights of a labor (177 acres) of farming land and a league (4,428 acres) of grazing lands; and the other provided for the compensation of empresarios or contractors who introduced immigrants at the rate of 66,774 acres for each two hundred families. With success already within his grasp Aus-

⁴⁵University of Texas Transcripts from Department of Fomento, Mexico.

⁴⁷Austin to the colonists, June 5, 1824. Austin Papers, miscellaneous

tin's hopes were now dashed by the overthrow of Iturbide and the annulment of all the laws passed since his accession. On April 14, however, the constituent Congress confirmed his grant as defined by the imperial decree, and he departed for Texas.⁴⁸ He was delayed at Monterey, as we have seen, settling details concerning his authority in the administration of the colony, and did not arrive until mid-summer.

There dissatisfaction already existed over the 12½ cent fee which the settlers had agreed to pay, and in an open letter of August 6, Austin made it plain that they must fulfill their contracts. He had risked his life, health, and property in the enterprise, and would make the fortunes of all his followers; to the expense already borne he must still add that of surveying and of issuing and recording titles; the government did not pay a cent toward these expenses, and a moment's reflection would convince them that they must help him a little. Those who could must pay money, others any kind of property that would not be a dead loss to him—horses, mules, cotton, hogs, poultry, furs, beeswax, home-made cloth, dressed deerskins, etc.,—part down and the balance in two, three, and four years. Most of what he collected would really go to improve the colony, so that all would benefit from it.⁴⁹ Four days later Bastrop, whom the Governor had appointed commissioner to extend titles to the settlers, pointed out to them some of the advantages which they enjoyed through Austin's labors: his grant was confirmed, their titles were secure, and would be issued at once; no other contract had been approved, Austin's grant was limited to three hundred families, Austin was absolute in determining who should be received into the colony, and those rejected by him would have to retire to the interior, there to await the disposition of the government.⁵⁰ The murmuring continued, but for a time they paid the fee.⁵¹

⁴⁸In 1829, Austin published an account of his experiences for the information of his colonists. See *A Comprehensive History of Texas*, I, 451-54.

⁴⁹Austin to Bell, and to Bell, Robertson, Kuykendall, *et al.*, August 6, 1823. Austin Papers.

⁵⁰Bastrop's proclamation "to the Inhabitants of the Colorado District," August 9, 1823. Austin Papers, miscellaneous.

⁵¹See, for example, Austin's receipts to Jared E. Groce, October 18, 1823, for \$326.49, part payment for two leagues of land; to Francis Big-

On October 30, Austin drew up an explicit statement of the conditions of settlement in his colony: settlers must give "the most unequivocal and satisfactory evidence of unblemished character, good morals, sobriety, and industrious habits"; and must have sufficient means to pay for their lands and get a start in the colony as farmers or mechanics. "No frontiersman who has no other occupation than that of a hunter will be received—no drunkard, no gambler, no profane swearer, no idler . . . will be received." Those rejected for bad character would be ordered from the settlements, and, if necessary, escorted out under guard, their own property being seized to pay the cost of the escort. Persons accepted as settlers would receive, as a rule, a league of land of their own choice at the rate of \$12.50 per hundred acres, payable in cash, cattle, or negroes, on receipt of title. This payment would include the cost of surveying, issuing and recording title, and all other charges. Persons with large capital or a large family might obtain more than a league. Single men must combine in groups of ten in order to receive a league in common. The next day he issued a public notice requiring newcomers to report immediately upon arrival to the nearest alcalde; if they wished land, they must report to Austin himself and show evidences of good character before selecting it.⁵²

gam, November 17, 1823, for \$1291.80; to Benjamin Fowler, November 25, for 200 bushels of corn at fifty cents a bushel; to Alexander Johnson, March 7, 1824, for \$231.75 "in surveyor's orders." All in Austin Papers, miscellaneous.

⁵²"Terms on which settlers are admitted into the colony formed by Stephen F. Austin in the Province of Texas," October 30, and "Public Notice," October 31, 1823. Austin Papers, miscellaneous. After this one Garner was given ten lashes for entering the colony without the proper credentials, showing Austin's intention of enforcing to the letter the requirement of certificates of character. See Austin to Bell, December 6, 1823. Austin Papers.

The provision for granting more than a league to those whose capital or large families would enable them to improve it was sound policy and was later incorporated in the State colonization law, but many of the settlers, those "North American frontier republicans," as Austin called them, "who felt that they were sovereigns," refused to see in it a valid ground of distinction. Their complaints caused Austin great annoyance, but he was relieved from further embarrassment on this point by the colonization law of March, 1825, which required the approval of all exceptional grants by the Governor.

In the meantime, murmurs over the 12½ cent fees had reached Bexar, and on May 20, 1824, the political chief, Antonio Saucedo, promulgated a schedule of fees which took no account of Austin's contracts. Thereafter for a league of land, the settler should pay \$127.50 to the commissioner who gave him his title, \$27 to the surveyor, \$8 for clerical labor and stamped paper, and \$30 to the government, or a total of \$192.50,⁵³ while at 12½ cents an acre it would have cost him \$555. Austin believed that Saucedo had no authority to interfere with his private contracts, and in a straightforward review of the history of the colony made a powerful argument for their observance. The enterprise had cost his father's life; he himself had spent three years and much money in getting the colony established; the contract was a fair one; they had accepted it freely and with full knowledge of its terms, and not one of them but knew he was getting good value for his money, because titles in Austin's grant were secure and would be issued immediately, while settlers in other parts of the province had not the slightest assurance that they would ever get titles.⁵⁴ If the Governor had the right to annul a private contract, would their titles be safe? Where could one draw the line?⁵⁵ When one remembers that the cost and labor of the local administration fell mainly on Austin, that presents to keep the Indians peaceable and sometimes the equipment for campaigns against them were paid for by him, that his house was a place of entertainment for travelers visiting the country with a view to settling, that he paid a secretary \$1000 a year chiefly to record titles and prevent conflicts and costly litigation by the colonists,⁵⁶ it is easy to understand that his premium lands would not only have been an inadequate compensation; but for years would not have reimbursed him for actual expenses. Much of his difficulty Austin attrib-

⁵³Memorandum signed by Austin and Saucedo, May 20, 1824. Austin Papers, miscellaneous.

⁵⁴Settlers outside Austin's Colony realized this advantage very keenly. See, for example, H. Jackson to Austin, San Jacinto, April 3, 1825 (Austin Papers): "The settlers on the east of San Jacinto is unanimous to Continue in your Collony they are willing to sine any pe[tition] for that purpose if you are wiling to accept us in your Collony"

⁵⁵Austin's explanatnon to his colonists, June 5, 1824. Austin Papers, miscellaneous.

⁵⁶Austin's memorial to the State Congress, October 11, 1827. Austin papers, miscellaneous.

uted to the colonists' ignorance of the Spanish language and to the indefiniteness of certain laws. "You know," he wrote in 1825, that it is innate in an American to suspect and abuse a public officer whether he deserves it or not. I have had a mixed multitude to deal with, collected from all quarters, strangers to each other, to me, and to the laws and language of the country. They came here with all the ideas of Americans and expect to see and understand the laws they are governed by, . . . Could I have shown them a law defining positively the quantity of land they were to get and no more and a code of laws by which they were to be governed I should have had no difficulty but they saw at once that my powers were discretionary, and that a very great augmentation to their grants could be made, and thus the colonization law itself and the authority vested in me under that law holds me up as a public mark to be shot at by every one.⁵⁷

Many of the settlers offered to pay. No candid man denied the obligation, said John P. Coles;⁵⁸ but Austin, knowing that others would refuse, and that efforts to make them pay against their will would injure the colony, relinquished his claims and collected from none.⁵⁹ Instead, Bastrop agreed to give him a third of the commissioner's fees, which would yield him \$42 a league.⁶⁰ Later both Federal⁶¹ and State⁶² colonization laws guaranteed such contracts between empresarios and colonists, and in his subsequent contracts Austin took advantage of this.⁶³ In April, 1825, at the opening of his second colony, he announced that, besides the cost of surveying, stamped paper, and the \$30 which must be paid to

⁵⁷Austin to B. W. Edwards, September 15, 1825. Austin Papers.

⁵⁸Coles to Austin, July 7, 1824. Austin Papers.

⁵⁹Austin's statement to his colonists (November 1, 1829), in *A Comprehensive History of Texas*, I, 462.

⁶⁰Austin's "Statement . . . relative to the settlement of the business between S. F. Austin and the late J. H. Hawkins, September 14, 1832. Austin Papers, miscellaneous. An excellent account of Austin's difficulties over the 12½ cent fee was published by Lester G. Bugbee in April, 1899, "Some Difficulties of a Texas Empresario," *Publications of Southern History Association*, 95-113.

⁶¹Passed August 18, 1824—Article 14. Gammel, *Laws of Texas*, I, 98.

⁶²Passed March 24, 1825—Article 9. *Ibid.*, 100.

⁶³Erasmo Seguin, Texan deputy in the National Congress, wrote Austin on August 11, 1824, that the colonization law would be passed the next day and that this was the intention of an article, which he quoted. Austin Papers.

the State in installments of four, five, and six years, applicants for a league must pay him \$60, the commissioner \$15 and the secretary who filed the application and translated and recorded the papers \$10.⁶⁴ Two years later he announced slight modifications of this schedule,⁶⁵ and in November, 1829, put into effect the scale that seems to have continued thereafter. This provided that immigrants must first file information concerning the number, age, and sex of their families and dependents, their occupations, place from which they emigrated, date of arrival in the colony, and certificate of Christianity, morality, and steady habits. If this was found satisfactory, they were given a certificate stating that they had been received by Austin as colonists, which entitled them to select for themselves any unappropriated land in the colony. For this certificate they paid Austin's secretary \$2. Having made their selections, they presented through the secretary a formal petition to the commissioner for a title. For the clerical labors involved in this, including translations, they paid the secretary \$5, signed a note promising to pay him \$5 more when the title was delivered, and signed a note for \$50 to Austin, payable \$10 on receipt of title and the balance in one year. "The above," explained Austin, "is a compensation for the labor of translating and attending to getting the titles for the applicant, which I am not bound to do, as empresario, unless paid for it."⁶⁶ In addition to this there was the commissioner's fee, fixed by law at \$15 for a league of pasture land and \$2 to \$2.50 for a *labor* of farming land;⁶⁷ the surveyor's fee of \$4 a mile; and the cost of stamped

⁶⁴"Regulations to be observed by those desiring land in Austin's Second Colony," April —, 1825. Austin Papers, miscellaneous. Saucedo seems to have approved this October 17, 1825.

⁶⁵"Notice," April 16, 1827. Austin Papers, miscellaneous.

⁶⁶Printed notice, dated November 20, 1829, pasted inside the front cover of "applications for land in Austin's colony, Book A," General Land Office. Austin suggested the following form of application:

"To Mr. S. F. Austin, Empresario—I have emigrated to this Colony, as one of the colonists whom you are authorized by Government to introduce; and I request that you will examine my recommendations, and that if found to be agreeably to law, receive me and my family under your contracts with the Government. I agree to the terms published by you on the 20th November, 1829; I am ready to take the oath prescribed by the Colonization Law."

⁶⁷Decree No. 62, Laws of Coahuila and Texas, May 15, 1828, in Gamel, *Laws of Texas*, I, 216.

paper for the application, title, and certified copy.⁶⁸ Until 1827 the original title was retained in Austin's office and a certified copy given to the settler, but, realizing the danger of losing loose sheets, Austin asked and obtained permission to record titles in a bound book.⁶⁹ The work of transcribing the documents and verifying the copies was done by Austin and his secretary, Samuel M. Williams, and Austin paid a draftsman \$5 a day from his own pocket to plat the survey at the end of each title.⁷⁰ The volume, in the General Land Office, bears eloquent testimony to his wise and painstaking interest in the welfare of the settlers.

The fees which Austin demanded of colonists who settled his later grants were frequently never paid. Hundreds of notes for \$50 each still preserved in his papers at the University of Texas show that many of them did not make even the initial payment on delivery of title. "No one was turned away, or ever waited for his title, because he was poor," said Austin, and most of those who paid did so with cows, horses, mules, hogs, corn, and other produce at a price far above the market.⁷¹ At times, on the contrary, he even lent them the money to pay the surveyor and the commissioner. Some money, however, was absolutely essential, and when he could Austin exacted cash from those who had it. This caused complaints of partiality, in which, to Austin's surprise, those who had profited most from his leniency and discrimination sometimes joined. Characteristically, however, he offered excuses for them: "They did not reflect that it was the interest of all to get the settlement under way, and that if poor men had been turned off because they could not pay their fees, the settlement would have been thinned so much that it would have been totally broken up."

The main features of the system as finally developed by Austin may be restated for the sake of clearness: From the beginning

⁶⁸Austin's "Notice" to the colonists, April 16, 1827. Austin Papers, miscellaneous.

⁶⁹Governor of the State to Gaspar Flores, Commissioner of Austin's Colony, May 31, 1827. Land Office, Vol. 54, p. 105.

⁷⁰*A Comprehensive History of Texas*, I, 459.

⁷¹Austin's statement to the Colonists, November 1, 1829, in *Ibid.*, 462-63: "I appeal to you all to say whether I would now get 40, 50, or 60 Dlls for horses which I have received at \$100, 120, and 150 Dlls and all other property in the same proportion."—Austin to his colonists, June 5, 1824. Austin Papers, miscellaneous.

Austin had sole authority to admit or reject immigrants within the broad limits of his grant, and the law, as well as sound policy required him to prevent the settlement of bad characters. He therefore required applicants to file testimonials of character from responsible persons and take the oath of allegiance to the Mexican government before granting them certificates of admission, which authorized them to select land and have it surveyed by an official surveyor appointed by the commissioner. This done, and the necessary notes and fees attended to, the applicant petitioned for his title, which, upon proper attestation from Austin, the commissioner issued. Essentially, of course, the system was the same as that in the United States, so that Austin's claim to our admiration is not that he originated an excellent system, but that at the cost of much labor and some money he so faithfully adhered to a model already tested by the experience of a generation.

3. *Establishment of Normal Government—the Ayuntamiento of San Felipe*

Austin's tenure of extraordinary powers was probably more prolonged than either he or the authorities had expected it to be, and was certainly more so than he desired. This was due to the disorganization of the central government, which made it impossible to attend to local affairs. By 1824, however, discussion of the Constitution was sufficiently advanced to warrant Congress in taking steps to put the Federal system into operation, and on February 4 it promulgated a decree for the election of State Legislatures. On May 7 it united Coahuila and Texas into one State, until Texas should be qualified "to figure as a State by itself," and ordered the election of ten deputies for Coahuila and one for Texas to form the Legislature at Saltillo.⁷² Texas was represented in the Federal Congress at this time by Erasmo Seguin,⁷³ and in May Bastrop⁷⁴

⁷²Dublan and Lozano, *Legislacion Mexicana*, I, 677, 706.

⁷³The salaries of deputies were paid by their respective provinces. The colonists subscribed 640 bushels of corn towards Seguin's maintenance. See list of subscriptions, November 16, 1823, Austin Papers, miscellaneous; also Austin to political chief, December 2, 1823, in translations from Bexar Archives, Texas State Library.

⁷⁴Austin to Alcalde of San Felipe de Austin, May 25, 1824. See also Austin to political chief, April 20, 1824—vote taken by courier yesterday and more than half the colonists have already chosen Bastrop; will

was elected to represent it in the Legislature. Austin, as we have seen, was a steady correspondent of Bastrop's, and made many suggestions for the improvement of local government, but the Legislature was engaged until March, 1827, in framing the Constitution, and the only law passed prior to that time which was of material importance to the colony was the colonization law, and that did not affect the government. Sections VI and VII of the Constitution applied to local government, the first defining the duties, powers, qualifications, and method of election of the political chief, and the second doing much the same thing for ayuntamientos. In both cases the substance of former Spanish laws and practices was embodied, but one provision led to Austin's release legally and formally, at least, from the burden of governing his collection of "North American frontier republicans." This was the requirement that an ayuntamiento must be established in towns which "of themselves or with the territory they embrace contain a population of one thousand souls."⁷⁵

The Constitution prescribed age, residence, property, and educational qualifications and terms of service,⁷⁶ but left particular definition of the duties and functions of the ayuntamiento to legislation. Accordingly on June 15 the Governor promulgated a law entitled "regulations for the political administration of the towns."⁷⁷ This began by providing that the ayuntamientos in towns with a population under 2,500 should consist of one *alcalde*, two *regidores*, and one *sindico procurador*; those between 2,500 and 5,000 should add two more *regidores*; those between 5,000 and

make a full report when all votes received; feels sure that Bastrop will be unanimously elected. Translations from Bexar Archives in Texas State Library.

⁷⁵Article 156, in Gammel, *Laws of Texas*, I, 335.

⁷⁶One must be a citizen, over twenty-five years old if single or twenty-one if married, three year a resident of the district, must have "some capital or trade whereby to subsist," and be able to read and write. Elections were to be held the second Sunday and Monday in December. All Alcaldes whether one or more, half the *regidores*, and half the *sindicos* were elected annually. If there was only one *sindico* he held for only one year.

⁷⁷This is omitted in the official publication of the Laws of Coahuila and Texas, and therefore does not appear in Gammel. There is a copy in Spanish in the Austin Papers and a translation in the *Texas Gazette*, October 31, 1829. The translation is anonymous, but was no doubt done by Austin. Among his manuscripts there are a number of notes identical with the footnotes in the *Gazette*. See p. 299, note 2, below.

10,000 were entitled to two *alcaldes*, six *regidores*, and two *sindicos*; and so on. The duties of the ayuntamiento covered a wide range, including most of the functions of a modern city commission and some of those belonging to the country commissioners—to promote the establishment of hospitals, poor houses and educational and charitable institutions, and to administer them when established; to license qualified and properly certified physicians and druggists and prevent others from practicing; to appoint boards of health, inspect foods, markets, and drug stores, keep the streets clean, visit prisons, drain lakes and stagnant ponds, and wage continual war on every menace to the health of man and beast; to see that streets were straight and ornamented with shade trees, and wherever possible, paved and lighted; to maintain roads and public buildings; preserve the forests; punish vagabonds, drunkards, idlers, and gamblers; promote agriculture, industry, and commerce; administer municipal funds, which, with the consent of the Governor and Legislature, might be raised by taxation; establish and supervise primary schools; and take the census every six months—these were some of the more important duties of the ayuntamiento.

Austin was at Saltillo in the fall of 1827 and took occasion to urge the establishment of constitutional government in his colony.⁷⁹ In response to his request the Governor, on November 17, instructed the political chief to order an election for an ayuntamiento with jurisdiction from the Lavaca to the watershed between the Trinity and the San Jacinto and from the sea to the San Antonio Road. Austin would preside over the electoral assembly and install and administer the oath to the newly elected officers, and all cases pending in the present alcalde courts would pass to the constitutional alcalde.⁸⁰ On December 11 the political chief transmitted the order to Austin, and he called the election for February 3-4, 1828. Austin realized the importance of choosing competent men who would take their duties seriously,

⁷⁹Austin to the State Congress, October 11, 1827. Austin Papers, miscellaneous.

⁸⁰Austin to J. H. Bell, January 1, 1828. Austin Papers. Austin suggested Ira Ingram for Alcalde, Bell and William Morton for *regidores*, and L. R. Kenney for *sindico procurador*. Thomas M. Duke, M. B. Nuckols, and Rawson Alley, were being mentioned for places, he said.

and it is evident that he did some electioneering.⁸¹ One may suspect in this a reluctance to retire from the helm, but on the contrary he was probably more interested in electing men to whom he could safely surrender his position as buffer between the colonists and the government.

While the election presented to the experience of the colonists little that was new in methods, nevertheless, as the first constitutional election in Anglo-American Texas, it demands a somewhat detailed description. Polls were opened in the old *alcalde* districts under the presidency of the respective *alcaldes*, and the voters elected a secretary and two tellers who could read and write. A candidate must be twenty-five years old, if single, twenty-one, if married; must have resided three years in the municipality, one year immediately preceding the election; must be able to read and write; and have a capital or trade sufficient for his subsistence. Qualifications for the franchise are not stated, but were probably the same. Voters called the names of their candidates aloud and they were recorded by the secretary; if they presented a written list, the names were read aloud by the secretary. All voted for an *alcalde* and two *regidores*, and, if the district contained five hundred inhabitants, a *comisario* and a *sindico procurador*. Separate tallies were kept for each office and sent at the close of the election to Austin, who in this first election had the position which thereafter belonged to the *alcalde* of the municipality. A week later the officers of the district elections met at San Felipe, canvassed the votes, and announced the successful candidates, sending a certified copy of the vote to the political chief, posting another in a public place, and filing the original lists in the local archive.⁸²

The duties of the *alcalde* fell into three general classes: (1) He presided over the *ayuntamiento* and was its executive officer; (2) he was a primary judge, or judge of first instance, having sole jurisdiction in cases under \$10, final jurisdiction acting with a representative of each of the parties to the suit in cases between

⁸¹*Ibid.*

⁸²For the procedure here described it is necessary to read the Constitution, Arts. 51, 53, 54, 160, in Gammel, *Laws of Texas*, I, 429, 446; Decree No. 23, in *Ibid.*, 191-192; Decree No. 37, Arts. 97-108, in the *Texas Gazette* as cited in note 77 above; Governor to political chief, November 17, 1827, as in note 80; and the proceedings of the first session of the *ayuntamiento* of San Felipe de Austin (see below, p. 299ff).

\$10 and \$100, and preliminary, examining jurisdiction in all other cases;⁸³ (3) and he was the medium of correspondence and administration between the colony on one side and the superior department and State authorities on the other, transmitting reports and memorials from the former and promulgating and putting into effect the orders and instructions of the latter. The natural comparison that comes to mind is that of a mayor who has not given up his judicial functions to police judges, but the *alcalde's* part in the State administration was much more direct than that of our mayors. The duties of the *regidores* and of the *sindico procurador* are nowhere clearly defined, the various Spanish and Mexican laws concerning the *ayuntamiento* assuming apparently that their functions were too well known to require statement. In general the *regidores* may be compared with our aldermen or city commissioners. They served on committees and looked after various departments of municipal administration, and in the absence of the *alcalde* the first *regidor* (ranked according to the number of votes received at election) acted in his place. The *sindico* was described by the *ayuntamiento* itself as "the procurator (*personero*) of all the civil affairs of the municipality,"⁸⁴ but this hardly enables one to visualize his functions. The best that can be made of the office is that it called for a sort of combination of the duties of a notary and city attorney. In addition to the elected officers there was a sheriff (*alguacil*), appointed by the *alcalde*, and a secretary elected by the *ayuntamiento*. The fact that all official correspondence and records, including the minutes of the *ayuntamiento*, must be in Spanish, which few of the colonists understood, made the secretary's office an important and burdensome one.⁸⁵

As we have seen, districts or precincts with 500 inhabitants elected a *comisario* and a *sindico*. Their term of office was one year, and while they might be re-elected, they could not be com-

⁸³Decree No. 39, "for the administration of justice in the State of Coahuila and Texas," June 22, 1827. Printed copy in the Bexar Archives. The law is omitted in Gammel.

⁸⁴"Municipal Ordinance for the Government and Regulation of the Ayuntamiento of Austin," enacted as Decree No. 100 by the Legislature. *Texas Gazette*, October 31, 1829. Chapter VII of Decree No. 37 is entitled, "Of the *comisarios de policia* and *sindicos*," but it describes only the duties of the *comisarios*.

⁸⁵*Ibid.*, Chapter VI.

pelled to serve more than one year in three. They were subject to the ayuntamiento, and might attend its sessions voluntarily or on summons, having a voice but no vote in its deliberations. The duties of the *comisario* were to take the census of his precinct, keep a record of the families moving into it and of the places from which they came, assist tax collectors, execute the orders of his superiors, arrest disturbers of the peace and preserve public tranquillity, and report "idle and vicious persons" to the *alcalde*.⁸⁶ In addition, he was invested with minor judicial authority similar to that of the *alcalde* or of a justice of the peace.⁸⁷ The duties of precinct *sindico* are described merely as being the same in his sphere as those of the *sindico* of the ayuntamiento.⁸⁸

We are fortunate in having the minutes of the ayuntamiento of San Felipe for the first four years of its existence—from February 12, 1828, to January 3, 1832⁸⁹—and in being able to see therein the Anglo-American adapting himself to Spanish local institutions. The first returns showed Thomas M. Duke elected *alcalde* over Austin's candidate, Ira Ingram, by a vote of 121 to 111. Thomas Davis and Humphrey Jackson were elected *regidores* and Rawson Alley *sindico*. Austin had called attention to the necessity of frequent meetings, and urged the choice of members within convenient distance of San Felipe,⁹⁰ but Duke lived ten and Jackson thirty leagues from the capital.⁹¹ The result could be easily foreseen. After regular meetings for less than two months the ayuntamiento adjourned to meet no more, if we are to judge from the absence of minutes, until time to canvass the next election returns in December. It performed but two acts of any consequence. One was to frame a municipal ordinance defining its own duties, functions, and rules of order, and outlining a plan of taxation for local needs; and the other was the adoption of a memorial to the Legislature to legalize labor contracts with servants whom the Constitution forbade immigrants to bring

⁸⁶Decree No. 37, Chapter VII, as cited in note 77, above.

⁸⁷Decree No. 23, in Gammel, *Laws of Texas*, I, 192.

⁸⁸Decree No. 37, Art. 158.

⁸⁹Beginning publication in this issue of THE QUARTERLY, p. 299.

⁹⁰Austin to Bell, January 1, 1828. Austin Papers.

⁹¹Minutes of the ayuntamiento, March 14, 1828.

to the country as slaves.⁹² The first was required by law, and was submitted to the Legislature and approved as a sort of city charter.⁹³ To meet municipal expenses and build a jail and town hall it levied specific property taxes on land, live stock, and slaves—ranging from \$4.50 on a league of land to two cents a head on hogs,—and occupation taxes on lawyers, merchants, and keepers of “tipling shops.”⁹⁴ The occupation taxes or licenses were from two to three times as high for foreigners as for citizens.

Having assessed the taxes, the ayuntamiento endeared itself to the people by taking no steps to collect them. “In fact,” said Austin speaking of this body, “they did nothing on any subject that they ought to have attended to.” The members were subject to fine for neglect of duty, and only Austin’s intervention prevented the political chief from imposing it. “I have actually exhausted all the stock of reasonable excuses that I could devise,” said Austin, “and have drawn so largely upon shadows and frivolous apologies that I am ashamed to interfere any more.”⁹⁵ Nevertheless, when the next ayuntamiento showed a disposition to take its duties seriously, a storm of protest arose from the people: The colonization law specifically exempted them from taxation and the ayuntamiento therefore had no legal right to levy a tax; the order requiring them to register births and deaths in their families was an imposition; the enforcement of the vagrancy laws was tyranny; the plan to build a courthouse “for the lawyers to strut in” was inexcusable extravagance. As always it fell to Austin to quiet the rising storm with arguments compounded of homely wisdom, cajolery, and persuasion, in the use of which he was a master. Austin himself was urged to become alcalde but declined. He no longer had the patience that the office required, he said; and moreover he had “other things to attend to of much more importance to the colony than settling little neighborhood disputes about cows and calves.”*

⁹²*Ibid.*, March 14, April 5, 1828.

⁹³Decree No. 100, in the *Texas Gazette*, October 31, 1829; omitted from official publication of the laws. See pp. 311-324.

⁹⁴The list of taxables mentioned in the law differs somewhat from that recorded in the minutes of March 14, 1828.

⁹⁵Austin to Bell, March 17, 1829. Austin Papers.

*Austin to Bell, April 16, 1830. Austin Papers.

A study of the minutes for the next three years shows the ayuntamiento performing the various functions of a modern city and county commission: laying off roads and supervising their construction; regulating ferries and ferriage rates; creating boards of health, boards of medical examiners, and quarantine boards; regulating weights and measures; repairing churches and public buildings; directing militia organization; holding special elections and settling election disputes; serving generally as conservator of public morals, first warning and then punishing vagrants and drunkards, enforcing the laws against gambling and other forms of vice, and closing "tipling shops" at ten o'clock. It assisted Austin in keeping the colony free of undesirables, advising when to grant and when to withhold titles to land; and relieved him of no little responsibility in deciding when titles should be forfeited for non-fulfillment of the conditions of the grant. Finally, it strove earnestly, but without success, to raise funds for the establishment of an academy at San Felipe. The problem of getting revenue for indispensable expenses remained always a most difficult one and the collections left no surplus for permanent improvements. The courthouse and jail projected by the first ayuntamiento were still unbuilt in 1832. This made the safeguarding of prisoners awaiting trial an expensive and embarrassing task, and helped to emphasize the defects in the judicial system. Another difficulty was that of keeping a competent secretary acquainted with Spanish. Samuel M. Williams served during most of the period under examination, but it was a sacrifice which he could ill afford to make, and whenever possible he withdrew from the office. During such intermissions Austin could sometimes be induced to serve; and on one occasion the ayuntamiento employed, to its subsequent regret, the Federal customs collector, George Fisher.⁹⁶ Throughout there is evidence of the closest harmony and co-operation between Austin and the ayuntamiento; he was always consulted on any matter of State or Federal relations.

Of the division of labor between the different members of the ayuntamiento the minutes give us no information. The principal employment of the alcalde was judicial, but his court records are not preserved. The general judicial system is clear, however,

⁹⁶Minutes, October 5, 16, 18, 1830.

from a study of the Constitution and of Decree No. 39, approved June 21, 1827. These show, as we have already seen, that the *alcalde* had sole and final jurisdiction in petty cases both civil and criminal. This jurisdiction was purely local, and, in a way, was outside the general system. In more important cases the *alcalde* was the court of first instance, conducting the examining trial and sending the record to the *asesor general*, or State's attorney, at Saltillo for advice as to the verdict that he should render. Having received the *asesor's dictamen*, or opinion, he must give judgment within eight days. He was not compelled to follow the *dictamen* exactly, but, since the *asesor* was a competent lawyer, he varied from it at some risk. An appeal could be, and in cases involving corporal punishment must be, taken from the court of first instance to the first chamber of the Supreme Court, which sat at Saltillo. The Supreme Court was composed of three judges, or *ministros*, and was divided into three chambers, one judge presiding over each chamber, and associating with himself in the hearings two colleagues, chosen one each by the parties to the suit. The second chamber heard appeals from the first, but the third was not a trial court at all. It ruled on questions of jurisdiction arising in the lower courts, determined "appeals of nullity"—motions to quash or set aside verdicts of the lower courts,—had some part, not clearly defined, in appeals from ecclesiastical courts, and had certain semi-clerical functions.⁹⁷

The opportunities for delay in such a system were very great, and its inconvenience to the Texans was enormous. Thus in any case of corporal punishment there was first an examining trial before the *alcalde*, the evidence was then forwarded to the *asesor general* at Saltillo, some 500 miles away, his *dictamen* was returned to the *alcalde* and judgment pronounced, but before it could be executed the judgment and all the documents in the case must make another trip to Saltillo to receive the approval of the Supreme Court. With the least possible delay four months were consumed in this procedure, and the normal time was from six to eight months.⁹⁸ In the meantime the prisoner was supposed to be in jail or employed on the public roads. If, as at San Felipe,

⁹⁷Constitution of Coahuila and Texas, Title III, in Gammel, *Laws of Texas*, I, 447-450; Decree No. 39 (June 21, 1827), in Bexar Archives.

⁹⁸Editorial in the *Texas Gazette*, August 29, 1830.

there was no jail, his safekeeping was both expensive and embarrassing.⁹⁹

The Constitution¹⁰⁰ authorized the Legislature to establish as soon as possible a system providing for trained judges (*jueces de letras*) in the primary courts and trial by jury, and time after time the colonists petitioned for them,¹⁰¹ but it was not until 1834 that the Legislature acted. Then it enacted¹⁰² a plan for district and superior courts similar to that suggested by Austin to Bastrop in 1826, but before it went fully into operation the revolution brought more sweeping changes.

It remains only to speak of the election of State officers. These were chosen by indirect vote, the citizens of each municipality electing electors in August who met at the capital of the department in September and voted for governor, vice-governor, the executive council, and members of the Federal Congress and the Legislature. In Texas, where until 1832 there was only one department, the vote of this body was final in the election of members of the Legislature, but for the other offices the departmental votes had to be canvassed by the Legislature to determine the result. In case of a tie, or no majority, for the office of governor the Legislature elected from the "two or more . . . having the highest number of votes."¹⁰³ This language lacks something of clearness, but fortunately it is not essential to the object of this paper to resolve the ambiguity. Before taking their seats it was customary for the newly elected members of the Legislature to ask and receive formal instructions concerning legislation which their constituents desired.¹⁰⁴

Until 1832, when the ayuntamiento of Brazoria was created, all the Anglo-American portion of Texas, except that between the Sabine and the San Jacinto, was subject to the jurisdiction first

⁹⁹See, for example, Austin to Musquiz, November 30, 1830. Austin Papers, miscellaneous (Blotter in June file).

¹⁰⁰Arts. 92 and 93.

¹⁰¹For example, minutes of the ayuntamiento, November 30, 1830; resolutions of a convention at San Felipe, June 12, 1832 (Translations from Bexar Archives, Texas State Library).

¹⁰²Decree No. 277, April 24, 1834, Gammel, *Laws of Texas*, I, 364-384.

¹⁰³Constitution, Art. 134.

¹⁰⁴See, for example, requests for such instructions in Sambrano to Austin, May 10, 1824, Austin Papers; and Austin to ayuntamiento of Nacogdoches, September 18, 1830, Nacogdoches Archives (Texas State Library).

of Austin and then of the ayuntamiento of San Felipe. The machinery of local government in frontier societies is likely under the most favorable conditions to work jerkily, with much grumbling and protesting, reflecting the characteristics of the community. The normal "North American frontier republican" is impatient of the restraints and formalities of law; and here the natural difficulties of local administration were aggravated by the obstacle of language and the colonist's inability to inform himself of the laws. It, nevertheless, seems plain from the documents that actual government in Austin's colony conformed with noteworthy fidelity to the Constitution and the laws. Perhaps this was due in part to the fact that in its essentials the system did not differ greatly from that with which the colonists were already familiar, but it was also due in no small measure to Austin's powerful influence and unremitting oversight. "Upon the whole," wrote a recent settler from Missouri in 1832, "I beleave we get along full as well as the inhabitants of territories in the United States, beleave the laws here are as well administered as they are in Arkansas and perhaps better, and equally as well as they were when I first went to Missouri."¹⁰⁵

¹⁰⁵J. F. Perry to Grady, July 12, 1832. Austin Papers.